Equality and Human Rights Commission

Minutes of the 100th meeting of the Board of the EHRC

24 January 2022 (09:30-13:00)
Virtual

Contents

Attending....2
Commissioners....2
Officers....2
Guests....2
Minutes....2
1. Chairwoman's introduction....2
2. Apologies for absence....2
3. Declarations of interest....2
5. Actions arising (EHRC 100.03)....3
6. Committee / Commissioner Working Group (CWG) updates....3
7. CEO Report....4
8. Single sex services....5
9. Conversion Therapy....6
10. Strategic Plan 2022-25....7
11. Annual plan priorities 2022-23....7
12. Any other business....8

Attending

Commissioners
Baroness Kishwer Falkner (Chairwoman); Caroline Waters (Deputy Chair); Suzanne Baxter; Jessica Butcher; Pavita Cooper; David Goodhart; Alasdair Henderson; Susan Johnson; Helen Mahy; Mark McLane; Akua Reindorf; Dr Lesley Sawers and Su-Mei Thompson.

Officers
Marcial Boo, Chief Executive Officer
Ben Coates, Chief of Staff
Cath Denholm, Chief Operating Officer
Melanie Field, Chief Strategy and Policy Officer
Julie Jarman, Senior Principal – Strategy Hub (items 10 & 11)
Jackie Killeen, Director of Regulation
Alasdair MacDonald, Director of Policy (item 9)
Callum MacInnes, Principal – Planning, Performance and Governance
Bill Malloy, Director of Finance etc & Governance (items 10 & 11)
Luke Taylor, Director – Evidence and Strategy (items 10 & 11)
Sarah Whelan, Senior Associate – Planning, Performance and Governance

Guests
Martyn Jones, Interim Chair - EHRC Wales Committee
Olivia Ely – Government Equalities Office (GEO)

Minutes

1. Chairwoman's introduction

1.1 The Chairwoman welcomed attendees, particularly Akua Reindorf who was appointed as a Commissioner for four years from 20 December 2021 and attending her first Board meeting.

2. Apologies for absence

2.1 No apologies received.

3. Declarations of interest

3.1 Akua Reindorf declared that she has been asked to be involved again with legal work on Islamophobia in the Conservative Party. Pavita Cooper similarly declared a possible conflict as she is an acquaintance of former Conservative MP Nusrat Ghani, who had made recent allegations on the topic. The Board agreed that, if any substantive discussion took place on this issue during the meeting, relevant Board members would recuse themselves.

Action: The Governance team to update declaration of interest forms.

4. Minutes of the 99th Board meeting (EHRC 100.01 & 100.02)

4.1 Su-Mei Thompson requested an amendment to point 8.9 of the Day 2 minutes.

4.2 The Board approved the minutes of the meeting of 23 November and 01 December as an accurate record.

5. Actions arising (EHRC 100.03)

5.1 The Board reviewed the Actions Log.

5.2 The Chairwoman queried whether the communications and stakeholder strategy (Action 100.02/5.1b) planned for the March Board meeting would include the communications approach to gender reassignment. The Board were assured that the immediate communications strategy for gender reassignment was already planned and in action.

5.3 The Board were advised that the Wales Impact report (Action 100.02/8.5a) is the subject of an annual report in the Senedd. The Wales team will therefore continue to produce a report, to be approved by the Wales Committee.

5.4 The GEO representative advised (Action 100.01/6.4a) that they are coordinating centrally with other government departments and organisations that had missed the reporting deadline.

5.5 Regarding the action (Action 100.01/6.3a) to share details of the artificial intelligence panel in Wales, it was agreed this should be for the Chief Strategy and Policy Officer to action, not Martyn Jones.

6. Committee / Commissioner Working Group (CWG) updates

6.1 The Scotland Commissioner advised that her Committee had met the Chairwoman and Chief Executive to discuss transgender and related issues. The Committee had welcomed the meeting and looked forward to further engagement on strategic issues in future. She reported plans to improve the sequencing of business between the Committee and Board.

Action: Chief Executive and senior executive staff to continue meeting the Scotland and Wales Commissioners and their Committees.

6.2 The Interim Chair of the Wales Committee noted that the Wales Team have submitted consultation responses to Senedd Committees and advised of other projects and events in which he had been engaged.

6.3 The Chair of the People and Workspaces Committee (P&WC) reported that the Commission's Change Programme was progressing as planned.

6.4 The Chair of the Audit and Risk Assurance Committee (ARAC) reported that an improvement plan is in place to address the results of the October 2021 ARAC effectiveness review. It includes clarifying the responsibilities of ARAC and P&WC; more robust reporting of risk; and proposals to change the term duration and timing of independent members' appointments to ensure they do not end their terms at the same time. Thanks were expressed to the Chief Operating Officer for her work. A short note on the latest ARAC meeting will be tabled at each Board meeting in future.

Action: The Chief Operating Officer to support ARAC and its Chair in implementing the improvement plan.

6.5 The Chair of the Commissioner Working Group on Human Rights Monitoring (CWG HRM) stated that, at its last meeting, the group had considered a number of human rights reports. There was a need to ensure that the reports reflected policy positions agreed by the Board, were balanced and analytical in tone, and included appropriate reference to international comparators. It was agreed that the Board should sign off all reports prior to publication once approved by the Working Group.

Action: Director of Policy and the Governance team to ensure the Board can approve all human rights reports before publication.

6.6 The Board agreed to the changes proposed to the CWG HRM Terms of Reference. The changes included delegating oversight of the reaccreditation process to the working group, subject to: deleting at point 2d the reference to 'meaningful co-ordination'; clarifying at point 8 the responsibility of the Leadership Team; including a standing representative from the Scotland Committee on the group; and adding that the group has a role in overseeing the Memorandum of Understanding and relationship with the Scotland Human Rights Commission (SHRC).

Action: The CWG HRM Secretariat to make agreed changes to Terms of Reference.

6.7 The Chair of the Commissioner Working Group on Is Britain Fairer (IBF) reported that the group will discuss the format and title of the next IBF report at its next meeting. The report will also look back over 10 years of equalities legislation, policy, data and lived experience and include international comparisons. The report should be a source of authoritative evidence and we should produce a priority list of data gaps.

6.8 The Chief Strategy and Policy Officer stated that the Disability Advisory Committee's last meeting will be on 8 March. Positive discussions had taken place on ways to engage some of its members once the Committee has come to an end.

7. CEO Report

7.1 After the Chief Executive had introduced his report, the Chairwoman stated that it was important for the Financial Conduct Authority to recognise the Commission's legal powers and discuss their position with the Commission prior to publishing their consultation response. The Scotland Commissioner advised that appointment of women to Boards is a devolved issue and noted the current legal challenges to a proposed Bill on the matter. The Board discussed the different approaches that private sector organisations take to collecting personal data and that legal difficulties depend in part on whether an individual has a Gender Recognition Certificate.

Action: The Director of Regulation to update the Chairwoman of discussions taking place with the FCA.

7.2 The Board considered that the Commission should become a more proactive regulator and enforcer on gender pay gap reporting. They would welcome a 'deep dive' to discuss serially non-complaint organisations and actions that could be taken.

Action: The Director of Regulation to schedule a deep dive for the Board on gender pay gap reporting.

7.3 The Board noted that the Commission's inquiry into the experience of low-paid staff from minority groups working in health and social care would be tabled at the February Board meeting.

7.4 The Board welcomed the Commission's regulatory approach to enforcement and agreed that a consistent approach to high-profile issues is needed, whilst being mindful of cost and resource. The Board were reassured that all future strategy papers would consider regulatory issues, including the appropriate intervention based on the evidence.

7.5 Board members asked that the sexual harassment prevention checklist for the hospitality industry be expedited, given that the sector is now regrouping after the pandemic. The Executive advised that discussions are taking place with the industry, with some organisations reluctant to engage until later in the year.

Action: The Director of Regulation to explore the timing of publishing the checklist and provide an update at the February Board meeting.

7.6 The Chief Executive advised that approval for leasing a permanent Cardiff office will be brought to the February Board for their approval.

Action: The Director of People and Infrastructure to bring the necessary approvals to the February Board meeting.

8. Single sex services

8.1 The Board recognised the need for service providers to have a policy in place that draws on our authoritative guidance, while being able to apply the policy

flexibly where necessary. That made it vital for the Commission's guidance to be clear and consider all the necessary legal issues. It was also important to consider implications in Scotland and Wales as well as across Britain as a whole.

8.2 Following discussion, the Board agreed that the Commission should produce interim guidance on single-sex spaces and also review the relevant sections of the Commission's statutory Code of Practice. Both should be done as soon as possible.

8.3 It was agreed that this area should be flagged as a risk in the Commission's updated risk register.

Action: The Director of Regulation to specify the communications approach and seek Board clearance of the single-sex spaces guidance and Code of Practice in mid-February.

Action: The Chairwoman to write to relevant Ministers to inform them of the Commission's approach to the Code of Practice and the short delay to producing the single-sex spaces guidance.

Action: The Director of Finance and Planning to add this as a risk to the Commission's risk register.

9. Conversion Therapy

9.1 The Board supported the ending of conversion therapy practices relating to both sexual orientation and being transgender. The Board agreed, as had the Scotland Committee, that it was important for 'conversion therapy' and 'being transgender' to be clearly defined in law and that this point should be made in the response to the UK's consultation. The Board also agreed with the Scotland Committee that we should make reference to those working in educational settings in our response, and with the Wales Committee that the UK Government should publish a human rights memorandum with its legislation. There should also be a clear process for obtaining and recording consents.

9.2 On this basis, the Board approved the Commission's response to the UK Government consultation to ban conversation therapies.

9.3 The Chairwoman advised the Board that she had met both the UK Minister of Equalities and the Cabinet Secretary for Social Justice, Housing and Local Government in the Scottish Government on 21 January. She had alerted them to the Commission's thinking on both conversion therapy and gender recognition reform. The Minister of Equalities had since asked that we be less prescriptive about the pre-legislative scrutiny we recommend for the proposed legislation on conversion therapy. The Board agreed that it is important for Parliament to scrutinise the legislation fully when a Bill is published due to the importance of achieving legal clarity around definitions, terminology and scope.

Action: The Director of Policy to amend the draft response and ensure it is published to respond to the UK government's consultation.

10. Strategic Plan 2022-25

10.1 The Chairwoman thanked the team for their work. Board members requested minor changes to the Strategy, including that mention be made of climate change and sustainability in the foreword, that digital inclusion and the importance of data be prioritised in the text, and that we replace the word 'fairness' with 'equality' in our strategic priorities.

10.2 On this basis, the Board endorsed the final version of the Strategic Plan 2022-25.

10.3 The Board would welcome a wider discussion in due course about the Commission's approach to data and evidence.

Action: The Director of Evidence and Strategy to bring an evidence strategy to the Board.

Action: The Chairwoman and Chief Executive to sign off Strategic Plan 2022-25 and to ensure its publication in March.

11. Annual plan priorities 2022-23

11.1 The Board discussed the proposals for the Commission's work programme for 2022-23, approving the approach proposed, subject to some detailed points. These included ensuring that a thorough evidence base supported all planned interventions, and that we conduct work on the right to freedom of speech, such as in relation to higher education. We should also consider work on gender pay gaps, as discussed earlier in the meeting, and potentially also on diversity within the police, particularly relating to concerns about retention.

11.2 The Board noted that the work programme had been discussed with the Scotland and Wales Committees and that there would be a further opportunity to discuss the Commission's business plan for 2022-23 at the Board's February meeting.

11.2 The Chairwoman informed the Board that the Secretary of State had indicated her support for a review of the powers available to us, including the potential power to levy fines. She had asked us to work with the Government Equalities Hub to develop proposals. This would be useful in the context of the Commission's reaccreditation later in 2022 as a National Human Rights Institution.

Action: The Director of Evidence and Strategy to develop proposals to strengthen the Commission's powers.

Action: The Director of Finance, Planning and Governance to incorporate the Board's suggestions and bring a business plan to the February Board meeting.

12. Any other business

12.1 The Chairwoman advised that the 22 March Board meeting will be held in Manchester. An all-staff away event is taking place the same afternoon, which Commissioners are invited to join. More detail will be circulated shortly.

Action: Governance Team to send Board members further details about the all-staff event in Manchester in March.

12.2 Board members were advised that the next Board meeting would take place virtually on 23 February 2022.

Agreed by the Board at its meeting of 23 February 2022.